



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA-R06-2016-0680; FRL-9966-55-Region 6]

Arkansas: Final Authorization of State-initiated Changes and Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: During a review of Arkansas' regulations, the Environmental Protection Agency (EPA) identified State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for final authorization and are authorizing the State-initiated changes through this direct final action.

DATES: This regulation is effective **[insert date 60 days after the date of publication in the Federal Register]**, unless the EPA receives adverse written comment on this regulation by the close of business **[insert date 30 days after the date of publication in the Federal Register]**.

If the EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The Director of the **Federal Register** approves the incorporation by reference of certain publications listed in the rule as of **[insert date 60 days after the date of publication in the Federal Register]** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R06-RCRA-2016-0680** by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* patterson.alima@epa.gov.
3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, RCRA Permit Section (RPM), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.
4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, RCRA Permit Section (RPM), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. **EPA-R06-RCRA-2016-0680**.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be Confidential Business Information (CBI) or otherwise protected through <http://www.regulations.gov> or e-mail. The Federal <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your

comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this authorization and codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733, Phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, EPA Region 6 Regional Authorization Coordinator, RCRA Permit Section (RPM), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533 E-mail address: *patterson.alima@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the EPA to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled “Approved State Hazardous Waste Management Programs” to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA’s inspection and enforcement. This rule also codifies in the regulations the prior approval of Arkansas’ hazardous waste

management program and incorporates by reference authorized provisions of the State's statutes and regulations.

The EPA is publishing this rule to authorize the State-initiated changes and incorporate by reference the State's hazardous waste program without a prior proposal because we believe these actions are not controversial and do not expect comments that oppose them. Unless we receive written comments which oppose the authorization in this codification document during the comment period, the decision to authorize Arkansas' State-initiated changes to its hazardous waste program will take effect. If we receive comments that oppose the authorization, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the State-initiated changes.

II. Authorization of state-initiated changes

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be

authorized.

B. What decisions have we made in this rule?

We conclude that Arkansas' revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Arkansas' rules more clear or conform more closely to the Federal equivalents and are so minor in nature that a formal application is unnecessary. Therefore, we grant Arkansas final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Arkansas has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Arkansas, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Arkansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Arkansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which Arkansas is being authorized by this direct final action are already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments opposing this action?

If the EPA receives comments that oppose the authorization of the State-initiated changes in this codification document, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later **Federal Register** document. You may not have another opportunity to comment, therefore, if you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we may withdraw only that part of this rule, but the authorization of the program changes that the comments do not

oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization of the State program will become effective and which part is being withdrawn.

In addition to the authorization of the rules described above in this document, the purpose of this **Federal Register** document is to codify Arkansas' base hazardous waste management program and its revisions to that program. The EPA has already provided notices and opportunity for comments on the Agency's decisions to codify the Arkansas program, and the EPA is not now reopening the decisions, nor requesting comments, on the Arkansas authorization as published in the **Federal Register** documents in Section I.F. of this preamble.

F. For what has Arkansas previously been authorized?

Arkansas initially received final authorization on January 11, 1985, effective January 25, 1985 (50 FR 1513), to implement its Base Hazardous Waste Management program. We granted authorization for changes to their program on August 23, 1985, via EPA letter, effective August 23, 1985; March 27, 1990 (55 FR 11192), effective May 29, 1990; September 18, 1991 (56 FR 47153), effective November 18, 1991; October 5, 1992 (57 FR 45721), effective December 4, 1992; October 12, 1993 (58 FR 52674), effective December 13, 1993; October 7, 1994 (59 FR 51115), effective December 21, 1994; June 20, 1995 (60 FR 32112), effective August 21, 1995; April 24, 2002 (67 FR 20038), effective June 24, 2002, as amended June 28, 2010 (75 FR 36538); August 15, 2007 (72 FR 45663), effective October 15, 2007, as amended June 28, 2010 (75 FR 36538); June 28, 2010 (75 FR 36538), effective August 27, 2010; August 10, 2012 (77 FR 47779), effective October 9, 2012; October 2, 2014 (79 FR 59438), effective December 1, 2014; October 31, 2014 (79 FR 64678), effective December 30, 2014; January 29, 2016 (81 FR

4961), effective March 29, 2016; and August 11, 2016. (81 FR 53025), effective October 11, 2016.

G. What changes are we authorizing with this action?

The State has made amendments to the provisions listed in the table which follows. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than, and not broader in scope than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Arkansas final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA regulations found at 40 CFR as of July 1, 2014. The Arkansas provisions are from the Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, adopted on September 25, 2015, effective October 18, 2015.

State requirement (APC&E Regulation No. 23)	Analogous Federal requirement (40 CFR)
262.13(f)	No direct Federal analog; 262 related
262.26(a)	No direct Federal analog; 262 related
262.26(b)	No direct Federal analog; related to 262 and 263.30
262.26(c)	No direct Federal analog; 262 related
262.26(e)	No direct Federal analog; 262 related
262.26(f)	No direct Federal analog; 262 related
262.26(g)	No direct Federal analog; related to 262, Subpart E, 263.20(g)(4), 264.12(a), and 265.55
262.32(b)	262.32(b)
262.34(j)	262.34(m)
262.35(a)(2)	261.5 related
262.41 introductory paragraph – (d) and (g) - (i)	262.41(a) intro. - (a)(4) and (a)(6) - (a)(8)
262.54(c)	262.54(c)

State requirement (APC&E Regulation No. 23)	Analogous Federal requirement (40 CFR)
262, Appendix I	262, Appendix I
264.75(g) – (j)	264.75(g) – (j)
264.316(b)	264.316(b)
264.552(a)(3)(ii) – (iv)	264.552(a)(3)(ii) – (iv)
265.75(g) – (j)	265.75(g) – (j)
265.147(a)(1)(i) & (ii)	265.147(a)(1)(i) & (ii)
265.316(b)	265.316(b)

H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Arkansas?

Arkansas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

III. Incorporation by reference

A. What is codification?

Codification is the process of placing a State’s statutes and regulations that comprise the State’s authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the EPA to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What is the history of codification of Arkansas' hazardous waste management program?

The EPA incorporated by reference Arkansas' then authorized hazardous waste program effective December 13, 1993 (58 FR 52674), August 21, 1995 (60 FR 32112), August 27, 2010 (75 FR 36538), December 1, 2014 (79 FR 59438), and March 29, 2016 (81 FR 4961). Note that at 79 FR 59443, the State agency acronym should be referenced as "(ADEQ)" with regard to the State's Memorandum of Agreement with the EPA. In this document, the EPA is revising subpart E of 40 CFR part 272 to include the authorization revision actions effective October 11, 2016 (81 FR 53025).

C. What codification decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Arkansas rules described in the amendments to 40 CFR part 272 set forth below. The EPA has made, and will continue to make, these documents available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

The purpose of this **Federal Register** document is to codify Arkansas' base hazardous waste management program and its revisions to that program. The document incorporates by reference Arkansas' hazardous waste statutes and regulations and clarifies which of these

provisions are included in the authorized and Federally enforceable program. By codifying Arkansas' authorized program and by amending the CFR, the public will be more easily able to discern the status of Federally approved requirements of the Arkansas hazardous waste management program. The EPA is not requesting comments on its decisions published in the **Federal Register** documents referenced in Section I.F of this preamble concerning revisions to the authorized program in Arkansas.

The EPA is incorporating by reference the Arkansas authorized hazardous waste management program in subpart E of 40 CFR part 272. Section 272.201 incorporates by reference Arkansas' authorized hazardous waste statutes and regulations. Section 272.201 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements, and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of Arkansas' codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Arkansas procedural and enforcement authorities. Section 272.201(c)(2) of 40 CFR lists the

statutory and regulatory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State provisions are not part of the codification?

The public needs to be aware that some provisions of Arkansas' hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

- (1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));
- (2) Federal rules for which Arkansas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;
- (3) Unauthorized amendments to authorized State provisions;
- (4) New unauthorized State requirements; and
- (5) Federal rules for which Arkansas is authorized but which were vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 08-1144, June 27, 2014).

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.201(c)(3) lists the Arkansas regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. "Broader in scope" provisions cannot be enforced by the EPA; the State, however, may enforce such

provisions under State law.

Additionally, Arkansas' hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations as well as certain Federal rules and new State requirements.

Arkansas has adopted but is not authorized for the following Federal rules published in the **Federal Register** on July 15, 1985 (50 FR 28702), April 12, 1996 (61 FR 16290), and January 8, 2010 (75 FR 1236). Therefore, these Federal amendments included in Arkansas' regulations, are not part of the State's authorized program and are not part of the incorporation by reference addressed by this **Federal Register** action.

Arkansas has adopted and was authorized for the Federal Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas rule which has since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 08-1144; June 27, 2014): The gasification exclusion rule was published on January 2, 2008 (73 FR 57) and added 40 CFR 260.10 "Gasification" and revised 40 CFR 261.4(a)(12)(i).

State regulations that are not incorporated by reference in this action at 40 CFR 272.201(c)(1), or that are not listed in 40 CFR 272.201(c)(2) ("legal basis for the State's implementation of the hazardous waste management program"), 40 CFR 272.201(c)(3) ("broader in scope"), or 40 CFR 272.201(c)(4) ("unauthorized State amendments"), are considered new

unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of Federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented

by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

IV. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference Arkansas' authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6,

2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Arkansas’ voluntary participation in the EPA’s State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Because this rule codifies pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 27, 2017.

Samuel Coleman, P.E.
Acting Regional Administrator Region 6

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under 40 CFR part 271 to the State of Arkansas for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows.

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Revise § 272.201 to read as follows:

§ 272.201 Arkansas State-administered program: Final authorization.

(a) *History of the State of Arkansas authorization.* Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Arkansas final authorization for the following elements as submitted to EPA in Arkansas' Base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on May 29, 1990; November 18, 1991; December 4, 1992; December 21, 1994; June 24, 2002; October 15, 2007; August 27, 2010; October 9, 2012, December 1, 2014,

December 30, 2014, March 29, 2016, and October 11, 2016, and **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* The State of Arkansas has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations.* (1) *Incorporation by reference.* The Arkansas statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Arkansas statutes that are incorporated by reference in this paragraph from LexisNexis, 9443 Springboro Pike, Miamisburg, Ohio 45342; Phone: (800) 833-9844; Website: <http://www.lexisnexis.com/store/us>. Copies of the Arkansas regulations that are incorporated by reference are available from the Arkansas Department of Environmental Quality (ADEQ) website at <http://www.adeq.state.ar.us/regs/default.htm> or the Public Outreach Office, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317; Phone number: (501) 682-0923. You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733; Phone number: (214) 665-8533, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or

go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The binder entitled “EPA-Approved Arkansas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated October 2016.

(ii) [Reserved]

(2) *Legal basis.* The following provisions provide the legal basis for the State’s implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 4, Business and Commercial Law, Chapter 75: Section 4-75-601(4) “Trade Secret”.

(ii) Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 8, Environmental Law, Chapter 1: Section 8-1-107.

(iii) Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Sections 8-7-204 (except 8-7-204(e)(3)(B)), 8-7-205 through 8-7-214, 8-7-217, 8-7-218, 8-7-220, 8-7-222, 8-7-224, 8-7-225(b) through 8-7-225(d), and 8-7-227.

(iv) Arkansas Resource Reclamation Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 8, Environmental Law, Chapter 7, Subchapter 3: Sections 8-7-302(3), 8-7-303 and 8-7-308.

(vi) Remedial Action Trust Fund Act of 1985, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 8,

Environmental Law, Chapter 7, Subchapter 5: Sections 8-7-503(6) and (7), 8-7-505(3), 8-7-507, 8-7-508, 8-7-511 and 8-7-512.

(vii) Arkansas Freedom of Information Act (FOIA) of 1967, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 25, State Government, Chapter 19: Sections 25-19-103(1), 25-19-105, 25-19-107.

(viii) Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended September 25, 2015, effective October 18, 2015, Chapter One; Chapter Two, Sections 1, 2, 3(a), 3(b)(3), 4, 260.2, 260.20(c) through (f), 261 Appendix IX, 270.7(h) and (j), 270.10(e)(8), 270.34, 19, Chapter Three, Sections 21 and 22; Chapter Five, Section 28.

(ix) Arkansas Pollution Control and Ecology (APC&E) Commission, Regulation No. 7, Civil Penalties, July 24, 1992.

(x) Arkansas Pollution Control and Ecology (APC&E) Commission, Regulation No. 8, Administrative Procedures, February 12, 2009.

(3) *Related legal provisions.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Section 8-7-226.

(ii) Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended September 25, 2015, effective October 18, 2015,

Chapter Two, Sections 6, 262.13(c), 262.26(d), 263.10(e), 263.13, 264.71(e), and 265.71(e).

(4) *Unauthorized State amendments and provisions.* (i) Arkansas has partially or fully adopted, but is not authorized to implement, the Federal rule listed in the following table. The EPA will continue to implement the Federal HSWA requirements for which Arkansas is not authorized until the State receives specific authorization for those requirements.

Federal Requirement	Federal Register Reference	Publication Date
HSWA Codification Rule – Delisting (HSWA) (Checklist 17B - amendments to 40 CFR 260.22 only)	50 FR 28702	July 15, 1985

(ii) The Federal rules listed in the following table are not delegable to States. Arkansas has adopted these provisions and left the authority to the EPA for implementation and enforcement.

Federal Requirement	Federal Register Reference	Publication Date
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152)	61 FR 16290.....	April 12, 1996
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Non-HSWA) (Checklist 222)	75 FR 1236.....	January 8, 2010

(5) *Vacated Federal rule.* Arkansas adopted and was authorized for the following Federal rule which has since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. 08-1144; June 27, 2014). As a result, the Arkansas provisions at Reg. 23, 260.10 “Gasification” and 261.4(a)(12)(i) are no longer considered to be part of the State’s authorized program. Consistent with the Court’s vacatur, EPA removed the vacated provisions from the CFR on April 8, 2015.

Federal Requirement	Federal Register Reference	Publication Date
Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (Non-HSWA) (Checklist 216 – Definition of “Gasification” at 40 CFR 260.10 and amendment to 40 CFR 261.4(a)(12)(i))	73 FR 57	January 2, 2008

(6) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Arkansas, signed by the Executive Director of the Arkansas Department of Environmental Quality (ADEQ) on June 27, 2012, and by the EPA Regional Administrator on July 10, 2012, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Statement of legal authority.* “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements, and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, May 7, 1992 and by the Independent Legal Counsel on May 10, 1994, February 2, 1996, March 3, 1997, July 31, 1997, December 1, 1997, December 12, 2001, July 27, 2006, December 12, 2010, October 1, 2012, and December 7, 2015 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(8) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by revising the listing for “Arkansas” to read as follows:

Appendix A to Part 272 — State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Sections 8–7–202, 8–7–203, 8–7–215, 8–7–216, 8–7–219, 8–7–221, 8–7–223 and 8–7–225(a).

Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, as amended by the 2015 Supplement, Title 8, Environmental Law, Chapter 10, Subchapter 3: Section 8–10–301(d).

Copies of the Arkansas statutes that are incorporated by reference are available from LexisNexis, 9443 Springboro Pike, Miamisburg, Ohio 45342; Phone: (800) 833-9844; Website: http://www.lexisnexis.com/store/us_

The regulatory provisions include:

Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended September 25, 2015 effective October 18, 2015. Please note that the 2015 APC&E Commission Regulation No. 23, is the most recent version of the Arkansas authorized hazardous waste regulations. For a few provisions, the authorized

versions are found in the APC&E Commission Regulation 23, effective January 21, 1996, March 23, 2006, June 13, 2010, or August 12, 2012. Arkansas made subsequent changes to these provisions but these changes have not been authorized by EPA. The provisions from the January 21, 1996, March 23, 2006, June 13, 2010, or August 12, 2012 regulations are noted below.

Chapter Two, Sections 3(b) introductory paragraph; 3(b)(2); 3(b)(4); Section 260 - Hazardous Waste Management System – General - 260.1; 260.3; 260.10 (except the definitions of “consolidation”, “gasification”, and the phrase “a written permit issued by the Arkansas Highway and Transportation Department authorizing a person to transport hazardous waste (Hazardous Waste Transportation Permit), or” in the definition for “permit”; 260.11; 260.20 (except 260.20(c) through (f); 260.21; 260.23; 260.30 through 260.33; 260.40; and 260.41.

Section 261 – Identification and Listing of Hazardous Waste -261.1; 261.2; 261.3; 261.4(a) (except the phrase “gasification (as defined in § 260.10 of this Regulation),” in 261.4(a)(12)(i); 261.4(b) through (h); 261.5; 261.6 (except (a)(5)); 261.7 through 261.11; 261.20 through 261.24; 261.30 through 261.33; 261.35; 261.39 through 261.41; and Appendices I, VII, and VIII.

Section 262 – Standards Applicable to Generators of Hazardous Waste - 262.10 (except 262.10(d)); 262.11; 262.12; 262.13 (except 262.13(c)); 262.20; 262.22 through 262.25; 262.26 (except 262.26(d)); 262.27; 262.30; 262.31 through 262.35; 262.40; 262.41 (except 262.41(e) and (f)); 262.41(e) (except references to PCBs) (January 21, 1996); 262.42; 262.43; 262.50 through 262.58; 262.60 (except 262.60(e)); 262.70; 262.200 through 262.216; and Appendix I.

Section 263 – Standards Applicable to Transporters of Hazardous Waste – 263.10 (except 263.10(d) and (e)); 263.11; 263.12; 263.20 (except 263.20(g)(4)); 263.21; 263.22; 263.25;

263.30; and 263.31.

Section 264 – Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities – 264.1; 264.3; 264.4; 264.10; 264.11; 264.12 (except 264.12(a)(2)); 264.13 through 264.19; 264.20(a) through (c); 264.30 through 264.35; 264.37; 264.50 through 264.56; 264.70; 264.71 (except 264.71(a)(3), (d), and (e)); 264.72 through 264.74; 264.75; 264.76(a); 264.77; 264.90 through 264.101; 264.110 through 264.120; 264.140; 264.141 (except the definition of “captive insurance” at 264.141(f)); 264.142; 264.143 (except the last sentence of 264.143(e)(1)); 264.144; 264.145 (except the last sentence of 264.145(e)(1)); 264.146; 264.147 (except the last sentences of 264.147(a)(1)(i) and 264.147(b)(1)(ii)); 264.148; 264.151; 264.170 through 264.179; 264.190 through 264.200; 264.220 through 264.223; 264.226 through 264.232; 264.250 through 264.254; 264.256 through 264.259; 264.270 through 264.273; 264.276; 264.278 through 264.283; 264.300 through 264.304; 264.309; 264.310; 264.312(a); 264.313; 264.314; 264.314(a)(4) (June 13, 2010); 264.315 through 264.317; 264.340 through 264.345; 264.347; 264.351; 264.550 through 264.555; 264.570 through 264.575; 264.600 through 264.603; 264.1030 through 264.1036; 264.1050 through 264.1065; 264.1080 through 264.1090; 264.1100 through 264.1102; 264.1200 through 264.1202; and Appendices I, IV, V, and IX.

Section 265 – Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities - 265.1; 265.4; 265.10; 265.11; 265.12 (except 265.12(a)(2)); 265.13 through 265.19; 265.30 through 265.35; 265.37; 265.50 through 265.56; 265.70; 265.71 (except 265.71(a)(3), (d), and (e)); 265.72 through 265.75; 265.76(a); 265.77; 265.90 through 265.94; 265.110 through 265.121; 265.140; 265.141 (except the definition of

“captive insurance” at 265.141(f)); 265.142; 265.143 (except the last sentence of 265.143(d)(1)); 265.144; 265.145; 265.146; 265.147 (except the last sentences of 265.147(a)(1) and 265.147(b)(1)); 265.148; 265.170 through 265.174; 265.176 through 265.178; 265.190 through 265.202; 265.220 through 265.226; 265.228 through 265.231; 265.250 through 265.260; 265.270; 265.272; 265.273; 265.276; 265.278 through 265.282; 265.300 through 265.304; 265.309; 265.310; 265.312(a); 265.313; 265.314; 265.314(a)(4) (March 23, 2006); 265.315; 265.316; 265.340; 265.341; 265.345; 265.347; 265.351; 265.352; 265.370; 265.373; 265.375; 265.377; 265.381 through 265.383; 265.400 through 265.406; 265.430; 265.440 through 265.445; 265.1030 through 265.1035; 265.1050 through 265.1064; 265.1080 through 265.1090; 265.1100 through 265.1102; 265.1200 through 265.1202; Appendix I; and Appendices III through VI.

Section 266 – Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities - 266.20 through 266.23; 266.70(a); 266.70(b) introductory paragraph through (b)(2) (August 12, 2012); 266.70(c) and (d); 266.80 (except items 6 and 7 to the 266.80(a) table); 266.100 through 266.112; 266.200 through 266.206; 266.210; 266.220; 266.225; 266.230; 266.235; 266.240; 266.245; 266.250; 266.255; 266.260; 266.305; 266.310; 266.315; 266.320; 266.325; 266.330; 266.335; 266.340; 266.345; 266.350; 266.355; 266.360; and Appendices I through XIII.

Section 267 – Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit - 267.1 through 267.3; 267.10 through 267.18; 267.30 through 267.36; 267.50 through 267.58; 267.70 through 267.76; 267.90; 267.101; 267.110 through 267.113; 267.115 through 267.117; 267.140 through 267.143; 267.147 through 267.151;

267.170 through 267.177; 267.190 through 267.204; and 267.1100 through 267.1108.

Section 268 – Land Disposal Restrictions - 268.1; 268.2 through 268.4, 268.7; 268.9; 268.13; 268.14; 268.20, 268.30 through 268.39; 268.40 (except 268.40(e)(1) – (4) and 268.40(i)); 268.41; 268.42 (except 268.42(b)); 268.43; 268.45; 268.46; 268.48 through 268.50; and Appendices III, IV, VI through IX and XI.

Section 270 – Administered Permit Programs: The Hazardous Waste Permit Program - 270.1 through 270.6; 270.7 (except 270.7(h) and (j)); 270.10 (except 270.10(e)(8)); 270.11 through 270.33; 270.40; 270.41; 270.42; 270.42 Appendix I; 270.43; 270.50; 270.51; 270.60 through 270.68; 270.70 through 270.73; 270.79; 270.80; 270.85; 270.90; 270.95; 270.100; 270.105; 270.110; 270.115; 270.120; 270.125; 270.130; 270.135; 270.140; 270.145; 270.150; 270.155; 270.160; 270.165; 270.170; 270.175; 270.180; 270.185; 270.190; 270.195; 270.200; 270.205; 270.210; 270.215; 270.220; 270.225; 270.230; 270.235; 270.250; 270.255; 270.260; 270.270; 270.275; 270.280; 270.290; 270.300; 279.305; 270.310; 270.315; and 270.320.

Section 273 – Standards for Universal Waste Management - 273.1 through 273.4; 273.5 (except 273.5(b)(3)); 273.6; 273.8 through 273.20; 273.30 through 273.40; 273.50 through 273.56; 273.60; 273.61; 273.62; 273.70 (except 273.70(d)); 273.80; and 273.81.

Section 279 – Standards for the Management of Used Oil - 279.1; 279.10; 279.11; 279.12; 279.20 through 279.24; 279.30 through 279.32; 279.40 through 279.47; 279.50 through 279.67; 279.70 through 279.75; 279.80; 279.81; and 279.82(a).

Copies of the Arkansas regulations that are incorporated by reference are available from the Arkansas Department of Environmental Quality website at <http://www.adeq.state.ar.us/regs/default.htm> or the Public Outreach Office, ADEQ, 5301

Northshore Drive, North Little Rock, Arkansas 72118-5317, Phone: (501) 682-0923.

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